

International Law and Litigation for US Judges
Comparative Judicial Practice
November 14, 2006

The life of a civil case in France

GENERAL CONSIDERATIONS ABOUT THE ROLE OF THE JUDGE IN THE FRENCH SYSTEM

- **Litigation of civil cases follow the accusatorial system** (unlike penal cases)
 - Art.2 CCP¹: “The parties conduct the proceeding under the duties incumbent upon them”
 - Art. 4 CCP: “The scope of the litigation is determined by the respective claims of the parties”.
 - Art. 5 CCP: “The judge must rule upon all what is claimed and only upon what is claimed”
- **However, since 1970, the role of the Judge has been reinforced:**
 - Art3 CCP: The judge supervises the proper progress of the proceeding; he has the authority to define the time-limits and order the necessary measures.
 - Purpose of the reform: to speed up litigations and ensure a fair process
- **The Judge cannot overlap on the powers of the Legislative Branch:**
 - Art 5 Civil Code:” Judges are forbidden to decide cases submitted to them by way of general and regulatory provisions.”
 - Judges cannot refuse to apply the law. Art. 4 CC: “A judge who refuses to give judgment on the pretext of legislation being silent, obscure or insufficient, may be prosecuted for being guilty of a denial of justice
 - This is the case even if he would consider that it is contrary to the Constitution
 - A contrario, Art. 4 CC allows the judge to interpret the law or to supply for it if it is silent
- **Civil procedure is in theory an oral procedure, but in practice essentially written.** There are usually no hearings, except in certain cases (family matters). The Judge only hears the parties themselves or their lawyers. Cross-examination is prohibited.
- **The Court is composed of three professional judges**, one of them being the President of the Chamber. There is no jury in civil cases. The President of the chamber can allocate the case to a single Judge. This decision can be reversed at the request of the parties or of the Judge himself.

¹ Code of Civil Procedure

THE PRE-TRIAL STAGE

- **The President of the Court decides whether to send the case directly to the Court or to the pre-trial Judge** (Mise en état)
- The role of the pre-trial Judge. The Judge may:

Hearing and conciliation of parties

- Hear the parties (a.764)
- Hear the lawyers and make any communication to them (a.764)
- Conciliate the parties and order the end of the case. The agreement is spelled out in a report which can be enforced. (a.768)

Control of the unfolding of the pre-trial phase

- Summon the lawyers to submit briefs, to submit a legal or factual explanation, to call in the case other parties (a.765)
- Establish time-limits in consideration of the nature, the complexity or the urgency of the case (a.764)
- Declare the pre-trial phase closed, which prohibits the later submission of briefs or new claims (a.779)

Building up of the case

- Rule on procedural pleas: parties are not allowed to make any claim on procedural grounds if they failed to do it before the pre-trial Judge (a.771)
- Order the parties to submit documents and pieces of evidence (a.765)
- Order provisional payments to creditors or payment of legal costs
- Order any provisional conservatory measure (a.771)
- Order an investigation measure, at the request of parties or on his own:
 - Production of documents (a.771) (only at the request of the parties)
 - “personal verifications” (on-site visit) (a.179)
 - Hearing of the parties (a. 184 et seq.)
 - Hearing of third parties, either through the submission of written testimonies, or through an investigation
 - Investigation: hearing of a party
 - before the Judge or any other Judge designated by the pre-trial Judge (a.225)
 - the requesting party must specify the facts to be asserted through the testimony (a.222)
 - the person is questioned by the Judge, and parties and lawyers cannot interfere; can only ask the Judge to ask certain questions (a.214)
 - Commission of an expert

THE TRIAL PHASE

- **Hearings are**
 - Public
 - Parties can request to be heard in a closed session
 - Oral
 - Parties make their arguments in oral, through the defense lawyer

- Witnesses are not heard, unless otherwise decided by the Court
- **The Court may order any further investigation** as necessary
- Hearings can be made before the whole Court, or before one of the Judges who will report to the Court
- The Court fixes the date when the judgment will be issued
- The decision of the Court spells out the considerations for the decision, but does not report dissenting voices within the Court
- **All decisions are subject to appeal**

MUTUAL LEGAL ASSISTANCE IN CIVIL MATTERS

- No bilateral MLAT in civil matters between France and the USA
- MLA governed by 2 The Hague Conventions:
 - Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters
 - Convention of 18 March 1970 on the Taking of Evidence Abroad
- 10-15 requests from the USA received by France every year
- Generally to hear a witness or for the production of documents
- Hearing of witness
 - By a Judge
 - Or by a third party (US consul, lawyer)
 - May follow the procedural requirements by the requesting State (Cross examination, etc)
- Prohibition of “fishing expeditions”
- Limits:
 - Risk for sovereignty or security
 - Contrary to fundamental principles of law